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10/632,282	08/01/2003	Bradley T. Thach	60005161-0018	5103

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EXAMINER

HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/632,282	Applicant(s) THACH, BRADLEY T.	
	Examiner Alissa L. Hoey	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-20 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-26 is/are rejected.
- 7) ☒ Claim(s) 11 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This is in response to amendment received 03/09/05. Claims 1, 5, 6 and 21 have been amended. The drawing objection from office action dated 12/14/04 has not been withdrawn, since the plurality of openings within the elongated body for attaching the backboard to the elongated shell is not illustrated. The Examiner's understanding is that the plurality of openings assist with attaching the back board shell to the back board by sewing. The elongated shell worn by the baby is not attached to the edges of the backboard where the holes are located. It is unclear and not illustrated how the plurality of openings within the elongated body attach the backboard to the elongated shell.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of openings within the elongate body attaching the backboard to the elongate shell of claims 11, 13 and 27 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 4, 7-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robb (WO 02/098263) in view of Magnusen (US 5,129,406).

In regard to claim 1, Robb teaches a backboard (10) attached (37) to a elongate shell garment that a baby is wearing (figure 10, identifier 16). The backboard (10) is attached between the head end and the foot end of a baby for preventing the baby from rolling over when sleeping (figure 6A). The elongate backboard (10) body supports the trunk of the baby and has a first face facing the baby and a second face opposite the first face (figure 6A).

However, Robb fails to teach the garment the baby is wearing being an elongate shell that swaddles the baby and has an outer surface, an inner surface opposite the outer surface defining an interior volume for receiving the arms, legs and trunk of a baby therein. The shell having a head end and a foot end and a neck opening at the head end for receiving a neck of the baby. A front corresponding to a front of the baby when received within the interior volume of the shell and a back opposite the front.

Magnusen teaches a baby swaddling garment (10) being an elongate shell that has an outer surface, an inner surface opposite the outer surface defining an interior volume for receiving the arms, legs and trunk of a baby (figure 4). The shell (10) having a head end and a foot end and a neck opening at the head end for receiving a neck of the baby (figure 4). A front corresponding to a front of the baby when received within the interior volume of the shell and a back opposite the front (figures 1-3).

In regard to claim 3, Robb teaches the backboard is releasably attached to the elongate shell (18, 37).

In regard to claim 4, Robb teaches the elongate backboard (10) body extends between a first end generally adjacent the head end of the elongate shell and a second end opposite the first end.

In regard to claim 7, Robb teaches the elongate backboard body having a flexible hinge (32) between the first end and the second end for facilitating positioning the baby within the elongate shell.

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In regard to claim 8, Robb teaches the backboard (10) further comprising a headboard (30) extending from the first end of the elongate body (28) for supporting a head of the baby when the baby.

However, Robb fails to teach the elongate shell garment swaddling the baby within. Magnusen teaches an elongate shell garment for swaddling a baby (10).

In regard to claim 9, Robb teaches the backboard (10) having a flexible hinge (33) coupled between the headboard (30) and the elongate body (28, 26) for allowing selective adjustment of an angle of the headboard (30) with respect to the elongate body (26, 28).

In regard to claim 10, Robb teaches the headboard (30) having a first face (20) facing the head of the baby (16) within the elongate shell and a second face (24) opposite the first face. The elongate body having a cushion (20) positioned on the first face of the headboard for cushioning the head of the baby (page 12, lines 6-12 and 24-25).

In regard to claim 12, Robb teaches a cushion (20) positioned on the first face of the elongate body for cushioning the trunk of the baby (page 12, lines 9-12).

It would have been obvious to have provided the backboard of Robb provided with a swaddling garment to be worn by the infant would provide a garment that can attach to a backboard providing not only pressure to a baby's body to simulate the pressure from the womb but also restrain the infant in a sleeping position to prevent the child from rolling over sideways.

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5. Claims 1, 2, 5, 6 and 21-26 rejected under 35 U.S.C. 103(a) as being unpatentable over Tandrup (US 5,826,287) in view of Magnusen (US 5,129,406).

In regard to claims 1 and 21, Tandrup teaches a backboard (10) that would be inherently attached to an elongate shell garment that a baby is wearing when. The backboard (10) is attached between the head end and the foot end of a baby for preventing the baby from rolling over when sleeping (figures 8 and 9). The elongate backboard body supports the trunk of the baby and has a first face facing the baby and a second face opposite the first face (figures 8 and 9). Further, Tandrup teaches a headboard extending from the head end of the body for supporting a head of the baby . The headboard having a first face facing the head of the infant and a second face opposite the first face and a cushion positioned on the headboard first face for cushioning the head of the infant (figure 5, identifier 18). An extension extending generally laterally from the body for preventing the baby from rolling over when the backboard is positioned on a surface so the second face faces the surface (figures 8 and 9).

However, Tandrup fails to teach the garment the baby is wearing being an elongate shell that swaddles the baby and has an outer surface, an inner surface opposite the outer surface defining an interior volume for receiving the arms, legs and trunk of a baby therein. The shell having a head end and a foot end and a neck opening at the head end for receiving a neck of the baby. A front corresponding to a front of the baby when received within the interior volume of the shell and a back opposite the front. Further, Tandrup fails to teach the elongated body being a rigid material.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the elongated body being a rigid material because Applicant has not disclosed that the elongated body being a rigid material provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the elongated body being a rigid material or a foam material because as long as the elongated body supports an infant and prevents the infant from rolling over the type of material is not critical. Therefore, it would have been an obvious matter of design choice to modify Tandrup to obtain the invention as specified in claim 21.

Magnusen teaches a baby swaddling garment (10) being an elongate shell that has an outer surface, an inner surface opposite the outer surface defining an interior volume for receiving the arms, legs and trunk of a baby (figure 4). The shell (10) having a head end and a foot end and a neck opening at the head end for receiving a neck of the baby (figure 4). A front corresponding to a front of the baby when received within the interior volume of the shell and a back opposite the front (figures 1-3).

In regard to claim 2, Tandrup teaches the backboard (10) further comprising an extension (12, 14, 16, 20) extending generally laterally from the elongate body for preventing the baby from rolling over when the garment is positioned on a surface so the second face faces the surface (figure 8 and 9).

In regard to claims 5 and 23, Tandrup teaches the extension is a first extension (12) extending from the elongate body generally adjacent the first end. The backboard

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further comprising a second extension (20) generally adjacent the first end of the body and extending generally opposite the first extension.

In regard to claims 6 and 24, Tandrup teaches the extension being a first extension (16) extending from the elongate body generally adjacent the second end. The backboard further comprising a second extension (20) generally adjacent the second end of the body and extending generally opposite the first extension.

In regard to claim 22, Tandrup teaches a hinged coupled between the headboard and the elongate body that is capable of allowing selective adjustment of the angle of the headboard with respect to the elongate body (figure 1, identifiers 28).

In regard to claim 25, Tandrup teaches a cushion positioned on the first face of the elongate body for cushioning the trunk of the baby (figure 5, identifier 18).

In regard to claim 26, Tandrup teaches an extension extending generally parallel to the elongate body (figure 1, identifier 20)

It would have been obvious to have provided the backboard of Tandrup with the infant swaddling garment of Magnusen, since the backboard of Tandrup provided with a swaddling garment to be worn by the infant would provide a garment that can attach to a backboard providing not only pressure to a baby's body to simulate the pressure from the womb but also restrain the infant in a sleeping position to prevent the child from rolling over sideways.

Allowable Subject Matter

6. Claims 13-20 are allowed.

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7. Claims 11 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 03/09/05 have been fully considered but they are not persuasive. Applicant's remarks have been reviewed and discussed below.

I) Applicant argues that the combination of Robb (WO 02098263) in view of Magnusen (US 5,129,406) was obtain using hindsight reconstruction.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ (CCPA 1971).

In this case the backboard garment of Robb is a support device for children used for many reasons including nappy changing, feeding, amusement and safety. The backboard of Robb is referred to as a resting area for a child (paragraph 0008). A baby resting on the backboard of Robb can be clothed in any garment that would be appropriate for resting including a swaddling garment. Swaddling garments simulate the pressure of the being in a womb to the baby. Some infants have difficulty resting or sleeping without the simulated pressure of the womb to relax them. The garment of

Magnusen is a swaddling garment used for infants to provide both warmth and restraint in order to enable an infant to rest. An infant that requires a swaddling garment when resting would inherently have one on when placed in the safety support backboard of Robb when used as safety resting support.

II) Applicant argues that Robb and Magnusen fail to teach a backboard attached to the back of the elongate shell.

Examiner disagrees since the backboard is attached to the back of a garment worn by an infant. The straps (18) secure the backboard to the infant's back. The claims don't require any sort of fastening attachment on the back of the garment, so as long as the backboard is attached to the garment along its back Robb and Magnusen teach the limitation as claimed.

III) Applicant argues that hindsight reconstruction was used to combine Tandrup (US 5,826,287) in view of Magnusen.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ (CCPA 1971).

In this case Tandrup teaches an infant support and positioning system. The support is multi-functional and can be used as a travel bed or sleeping nest (column 1,

lines 55-59). Magnusen teaches an infant swaddling garment that provides both warmth and restraint in order to enable the infant to rest. An infant sleeping in the travel bed or sleep nest of Tandrup and wearing the swaddling garment of Magnusen to sleep comfortably would be an obvious combination to one skilled in the art.

IV). Applicant argues that Tandrup in view of Magnusen fails to teach a backboard attached to the back of the infant garment.

Examiner disagrees since the backboard of Tandrup is attached to the back of an infant garment (figure 8). The backboard (38) is attached by strap (33) to the back of the infant and the garment it is wearing. The claim does not require any sort of fastening attachment located on the back of the garment and therefore Tandrup in view of Magnusen reads on the limitation as claimed.

V). Applicant argues that Tandrup and Magnusen fail to teach a rigid backboard.

Examiner notes that the backboard being rigid is only a particular embodiment of the invention and that as long as the backboard supports the infant and prevents it from rolling over the material of the backboard is not critical to the invention.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ALH
May 19, 2005


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